



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 7 अगस्त, 1959/16 श्रावण, 1881

JUDICIAL COMMISSIONER'S COURT

Simla-1, the 5th June, 1959/15th Jyaistha, 1881

No. J.C. 16-(76)/53.—“The following rules made by the Judicial Commissioner's Court, Himachal Pradesh with the previous sanction of the Lieutenant Governor, Himachal Pradesh under section 125 of the Code of Civil Procedure annulling, altering or adding to the rules in the First Schedule of the Code are hereby published for general information.”

The following additions and alterations to the Rules contained in the First Schedule of the Code of Civil Procedure have been made by the Judicial Commissioner under section 125 of the Code of Civil Procedure to regulate its own procedure and the procedure of the Civil Courts subject to his superintendence:—

(i) Order 11, rule 8.

(1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action.

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit amended plaint for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Courts' order, the Court shall proceed as provided in rule 18 of Order VI and as required by the provisions of the Court-fees Act.

(ii) Order V, rule 7:

The summons to appear and answer shall order the defendant to produce

all documents in his possession or power upon which he basis his defence or any claim for set-off and shall further order that where he relies on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement.

(iii) Order V, rule 10:

Mode of service.—Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court:

Provided that in any case, if the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgment due), instead of in the mode of service laid down in this rule.

(iv) Order V, rule 15:

Where service may be on male member of defendant's family.—Where in any suit the defendant cannot be found or is absent from his residence and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

(v) Order V, rule 18, Form No. 11 of Appendix B:

No. 11

Affidavit of process-server to accompany return of a summons or notice.

(O .5, r. 18)

(TITLE)

The affidavit of....., son of.....
I..... make oath/affirm and say as follows:—

- (1) I am a process-server of this Court.
- (2) On the..... day of..... 19.....
I received a summons /notice issued by the Court of.....
in suit No..... of 19..... in the said Court.
dated the..... day of..... 19.....
for service on.....
- (3) The said..... was at the time
personally known to me, and I served the said Summons/notice
on him/her on the..... day of.....
19....., at about O'clock
in the..... noon.at
by tendering a copy thereof to him/her and requiring his/her
signature to the original summons/notice.
- (a)
- (b)
- (a) Here state whether the person served, signed or refused to sign.
the process, and in whose presence.
- (b) Signature of process-server.

Or

- (3) The said..... not being personally
known to me..... accompanied me

to..... and pointed out to me a person whom he stated to be the said..... and I served the said summons/notice on him/her on the..... day of..... 19..... at about..... O'clock in the..... noon at..... by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served, signed or refused to sign, the process, and in whose presence.

(b) Signature of process-server.

Or

(3) The said..... and his house in which he ordinarily resides personally known to me/pointed out to me by..... I went to the said house in..... and thereon the..... day of..... 19..... at..... O'clock in the fore/after noon I did not find the said.....

I enquired { (a) } Neighbours.
(b)

I was told that..... had gone to..... and would not be back till.....

Signature of process-server.

Or

If substituted service has been ordered, state fully and exactly the manner in which the summons was served, with special reference to the terms of the order for substituted service.

Sworn /Affirmed by the said.....before me this..... day of..... 19.....

Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.

(vi) Order VII, rule 2:

In money suits.—Where the plaintiff seeks the recovery of money the plaintiff shall state the precise amount claimed.

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaintiff shall state approximately the amount or value sued for.

(vii) Order VII, rule 17:

(1) *Production of shop-book.*—Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop book or other account in his possession or power the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) *Original entry to be marked and returned.*—The Court, or such officer as it appoints in this behalf, shall forthwith mark the documents for the purpose of identification; and, after examining and comparing the copy with the original

shall, if it is found correct, certify it to be so, and return the book to the plaintiff and cause the copy to be filed.

Explanation.—When a shop book or other account written in a language other than English or the language of the Court is produced with a translation or transliteration of the relevant entry, the party producing it shall not be required to present a separate affidavit as to the correctness of the translation or transliteration, but shall add a certificate on the document itself, that it is a full and true translation or transliteration of the original entry, and no examination or comparison by the ministerial officer shall be required except by a special order of the Court.

(viii) Order VII, rule 19:

Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature.

(ix) Order VII, rule 20:

An address for service filed under the proceeding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides, if within the limits of the territorial jurisdiction of the Judicial Commissioner's Court, Himachal Pradesh.

(x) Order VII, Rule 21:

Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(xi) Order VII, rule 22:

Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process shall be fixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons, or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice, summons or other process had been personally served.

(xii) Order VII, Rule 23:

Where a party engages a pleader, notice, summons or other processes for service on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by the party.

(xiii) Order VII, Rule 24:

A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.

(xiv) Order VII, rule 25:

Nothing in these rules shall prevent the Court from directing the service of a notice, summons or other process in any other manner, if, for any reasons, it thinks fit to do so.

(xv) Order VIII, rule 1:

(1) The defendant may, and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement, of his defence; and with such written statement, or if there is no written statement, at the first hearing, shall produce in Court all documents in his possession or power on which he basis his defence or any claim for set-off.

(2) Where he relies on any other documents as evidence in support of his defence or claim for set-off he shall enter such documents in a list to be added or annexed to the written statement, or where there is no written statement, to be presented at the first hearing. If no such list is so annexed or presented, the defendant shall be allowed a further period of ten days to file this list of documents.

(3) A document which ought to be entered in the list referred to in sub-clause (2) but which has not been so entered, shall not, without the leave of the Court, be received in evidence on the defendant's behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents produced for cross-examination of plaintiff's witnesses or handed to a witness merely to refresh his memory.

(xvi) Order VIII, rule 11:

Every party, whether original, added or substituted, who appears in any suit or other proceeding shall, on or before the date fixed in the summons, notice or other process served on him as the date of hearing, file in Court a proceeding stating his address for service, and, if he fails to do so, he shall be liable to have his defence. If any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act *suo motu* or on the application of any party for an order to such effect, and the Court may make such order as it thinks just.

(xvii) Order VIII, rule 12:

Rules 20, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule.

(xviii) Order IX, rule 9:

Decree against plaintiff by default bars fresh suit.—(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and, if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that the plaintiff shall not be precluded from bringing another suit for redemption of a mortgage, although a former suit may have been dismissed for default.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

(xix) Order XIII, rule 9:

Return of admitted documents.—(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same—

(a) Where the suit is one in which an appeal is not allowed, when the the suit has been disposed of, and

- (b) Where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred, or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless:

Provided further that the cost of such certified copy shall be recoverable as a fine from the party at whose instance the original document has been produced.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

(xx) Order XVI, rule 1:

Summons to attend to give evidence or produce documents.—At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents:

Provided that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to produce any witness not named in a list, which must be filed in Court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence without an order of the court made in writing and stating the reasons thereof.

(xxi) Order XVI, rule 2:

(1) *Expenses of witnesses to be paid into Court on applying for summons.*—The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Exception.—When applying for a summons for any of its own officers, Government will be exempt from the operation of clause (1).

(2) *Experts.*—In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) *Scale of expenses.*—Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

(xxii) Order XVI, rule 3.

Tender of expenses to witness.—(1) The sum paid into a Court shall, except in the case of a Government servant, be tendered to the person summoned at the time of serving the summons if it can be served personally.

(2) When the person summoned is a Government servant, the sum so paid into Court shall be credited to Government.

(1) **Exception.**—In cases in which Government servants have to give evidence at a Court situate not more than five miles from their headquarters, actual travelling

expenses incurred by them may, when the Court considers it necessary, be paid to them.

Exception.—(2) A Government servant, whose salary does not exceed Rs. 10 per mensem, may receive his expenses from the Court.

(xxiii) Order XVI, rule 4:

Procedure where insufficient sum paid in.—(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned, or, **when such person is a Government servant, to be paid into Court**, as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

(xxiv) Order XVI, Rule 16:

(1) *When they may depart.*—A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

(3) **In the absence of the presiding officer the powers conferred by sub-rule (2) may be exercised by the Senior Subordinate Judge of the first class exercising jurisdiction at the headquarters of the district, or by any Judge or court official nominated by him for the purpose.**

Provided that a Court official nominated for the purpose, shall not order a person, who fails to furnish such security as may be required under sub-rule 2 to be detained in prison, but shall refer the case immediately to the Presiding Officer on his return.

(xxv) Order XVII, rule 1:

Court may grant time and adjourn hearing.—(1) **Subject to the provisions of Order XXIII, Rule 3**, the Court may, if sufficient cause is shown at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case, the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

(3) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1), the Court shall proceed with the suit forthwith.

(xxvi) Order XVIII, rule 2:

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Explanation I.—Nothing in this rule shall affect the jurisdiction of the Court, of its own accord or on the application of any party, for reasons to be recorded in writing, to direct any party to examine any witness at any stage.

Explanation II.—The expression “witness” in *Explanation I* shall include any party as his own witness.

(xxvii) Order XX, rule 6:

(1) The decree shall agree with the Judgement, it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(1-A) In addition to the particulars mentioned in clause (1), the decree shall contain the addresses of the plaintiff and the defendant as given in Order VII, rule 19, and Order VIII, rule 11, or as subsequently altered under Order VII, rule 24, and Order VIII, rule 12, respectively.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter.

(xxviii) Order XXI, rule 1:

Modes of paying money under a decree.—(1) All money payable under a decree shall be paid as follows, namely—

(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

Explanation.—The judgement-debtor may, if he so desires, pay the decretal amount or any part thereof, into the Court under clause (a) by postal money order on a form specially approved by the Judicial Commissioner's Court for the purpose.

(2) Where any payment is made under clause (a) of sub-rule (1) notice of such payments shall be given to the decree-holder.

(xxix) Order XXI, rule 5:

Where the Court to which a decree is to be sent for execution is situate within the same district as the court which passed such decree, such court shall send the same directly to the former court. But, where the court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court or to the Court of any Judge having jurisdiction in the place where the decree is to be executed to whom power to receive plaints has been delegated by the District Judge of the district in which the decree is to be executed.

(xxx) Order XXI, rule 10:

Application for execution.—Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof:

Provided that if the judgement-debtor has left the jurisdiction of the Court which passed the decree, or of the Court to which the decree has been sent, the holder of the decree may apply to the Court within whose jurisdiction the judgement-debtor is, or to the officer appointed in this behalf, to order immediate execution on the production of the decree and of an affidavit of non-satisfaction by the holder of the decree pending the receipt of an order of transfer under section 39.

(xxx) Order XXI, rule 16:

Application for execution by transferee of decree.—Where a decree, or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor, and the judgement-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

(xxxii) Order XXI, rule 17:

Procedure on receiving application for execution of decree.—(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court shall fix a time within which the defect shall be remedied and if it is not remedied within such time, may reject the application.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

(xxxiii) Order XXI, rule 22:

Notice to show cause against execution in certain cases.—(1) Where an application for execution is made—

- (a) more than two years after the date of the decree, or
- (b) against the legal representative of a party to the decree, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.

Provided that no such notice shall be necessary in consequence of

more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgement-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice. **Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction.**

(xxxiv) Order XXI, rule 26:

When Court may stay execution.—(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being, shown, stay the execution of such decree for a reasonable time, to enable the judgement-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgement-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgement-debtor, the Court shall, **unless sufficient cause is shown to the contrary**, require such security from, or impose such conditions upon, the judgement-debtor as it thinks fit.

(xxxv) Order XXI, rule 31:

Decree for specific movable property.—(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgement-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds, the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application:

Provided that the Court may in any special case, according to the special circumstances thereof, extend the period beyond three months; but it shall in no case exceed six months in all.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months or such other period as may have been prescribed by the Court from the

date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

(xxxvi) Order XXI, Rule 32:

Decree for specific performance for restitution of conjugal rights, or for an injunction.—(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property, or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for **three months**, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application:

Provided that the Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three months; but it shall in no case exceed one year in all.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the **end of three months or such other period as may have been prescribed by the Court** from the date of the attachment, no application to have the property sold has been made or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

ILLUSTRATION

A, a person of little substance, erects a **building** which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal, from A in the execution proceedings.

(xxxvii) Order XXI, rule 39:

Subsistence allowance.—(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the Judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application, the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains un-expired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any), shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgement debtor shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

(xxxviii) Order XXI, rule 43:

(1) Where the property to be attached is movable property other than agricultural produce, in the possession of the judgement-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof.

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and

Provided also that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed, and the attaching officer does not act under the first proviso to this rule, he may, at the instance of the judgment debtor, or of the decree-holder or of any person claiming to be interested in such property, leave it in the village or place where it has been attached—

- (a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No. 15-A of Appendix E to this Schedule, with one or more sufficient sureties for its production when called for, or
- (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided, and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the Judicial Commissioner's Court, be paid in advance, or
- (c) in the charge of a village lambardar or such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No. 15-B of Appendix E with one or more sureties for its production.

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rules 55, 57 or 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment.

(3) When property is made over to a custodian under sub-clause (a) or (c) of clause (1) the schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by—

(a) the custodian and his sureties; -

(b) the officer of the Court who made the attachment;

- (c) the person whose property is attached and made over; and
- (d) two respectable witnesses.

One copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings under which the attachment has been ordered, one copy will be made over to the person whose property is attached and one copy will be made over to the custodian.

(xxxix) Order XXI, rule 43-A:

(1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court, and shall, with his report, forward a list of the property seized.

(2) If attached property is not sold under the first proviso to rule 43, or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court.

(3) A custodian appointed under the second proviso to rule 43 may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him.

(4) When any property is taken back from a custodian, he shall be granted a receipt for the same.

(xl) Order XXI, Rule 43-B:

(1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is retained shall provide for its maintenance, and, if he fails to do so, and if it is in charge of an officer of the Court, it shall be removed to the Court-house.

Nothing in this rule shall prevent the judgment-debtor, or any person claiming to be interested in such stock, from making such arrangements for feeding the same as may not be inconsistent with its safe custody.

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property, if sold or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings.

(xli) Order XXI, Rule 43-C:

When an application is made for the attachment of live-stock or other movable property, the decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for 15 days. If within 3 clear days before the expiry of any such period of 15 days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

(xlii) Order XXI, Rule 43-D:

Any person who has undertaken to keep attached property under rule 43 (1) (c) shall be liable to be proceeded against as a surety under section 145 of the Code, and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him.

(xliii) Appendix E to Schedule 1.

FORM No. 15-A

Bond for safe custody of movable property attached and left in charge of person interested and sureties

(ORDER XXI, RULE 43)

In the Court of..... at..... Civil
suit No..... of A. B. of.....

Against

C. D. of.....
known all men by these presents that we, I. J. of.....
etc., and K. L. of..... etc., and M. N. of.....
.....etc., are jointly and severally bound to the Judge
of the Court of..... in Rupees.....
to be paid to the said Judge for which payment to be made we bind ourselves, and
each of us, in the whole, our and each of our heirs, executors and administrators
jointly and severally, by these present.

Dated this..... day of..... 19.....
And whereas the movable property specified in the schedule hereunto annexed
has been attached under a warrant from the said Court, dated the.....
day of..... 19..... in execution of a decree
in favour of..... in suit No'.....
of..... 19..... on the file of.....
and the said property has been left in the charge of the said I. J.

Now the condition of this obligation is that, if the above bounden I. J. shall duly
account for and produce when required before the said Court all and every property
aforesaid and shall obey any further order of the Court in respect thereof, then
this obligation shall be void; otherwise it shall remain in full force.

I.J./K.L./M.N.

Signed and delivered by the above bounden.....
in the presence of.....
(xliv)

FORM No. 15-B

Bond for safe custody of movable property attached and left in charge of any person and sureties

In the Court of..... at..... Civil
suit No..... of.....
A. B. of.....

Against

C. D. of.....
known all men by these presents that we, I. J. of..... etc.,
and K. L. of..... etc., and M. N.
.....etc., are jointly and severally bound to the Judge of the Court
of..... in Rupees.....
to be paid to the said Judge, for which payment to be made we bind ourselves, and
each of us, in the whole, our and each of our heirs, executors and administrators
jointly and severally, by these presents.

Dated this..... day of..... 19.....
And whereas the movable property specified in the schedule hereunto annexed has
been attached under a warrant from the said Court, dated the.....
day of..... 19..... in execution of a decree in favour
of..... in suit No. of.....

19..... on the file of..... and the said property has been left in the charge of the said I. J.

Now the condition of this obligation is that, if the above bounden I. J. shall duly account for and produce when required before the said Court all and every property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void; otherwise it shall remain in full force and be enforceable against the above bounden I. J. in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I. J. were a surety for the restoration of property taken in execution of a decree.

I.J./K.L./M.N.

Signed and delivered by the above bounden..... in the presence of.....

(xlv) Order XXI, rule 45:

Provisions as to agricultural produce under attachment.—(1) Where agricultural produce is attached the Court shall make such arrangements for the custody thereof as it may deem sufficient, and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and with every such application such charges as may be necessary for the custody of the crop upto the time at which it is likely to be fit to be cut or gathered shall be paid to the Court.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

(xlvi) Order XXI, rule 53:

Attachment of decrees.—(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage, or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by Order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court and to the Court to which it has been transferred for execution of a notice by the Court which passed the decree sought to be executed, requesting such other

Court to stay the execution of its decree unless and until—

- (i) the Court which passed the decree sought to be executed cancels the notice; or
- (ii) the holder of the decree sought to be executed or **with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court**, his judgment-debtor applies to the Court receiving such notice to execute the attached decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order **with the knowledge** thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

(xlvii) Order XXI, rule 54:

Attachment of immovable property.—(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land, paying revenue to the Government, in the office of the Collector of the district in which the land is situate; **where the property is land situated in a Cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Officer in whose area that Cantonment is situated.**

(3) The order shall take effect as against person claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier.

(xlviii) Order XXI, rule 58:

(1) *Investigation of claims to, and objections to attachment of attached property.*—Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed and that if an objection is not made within a reasonable time of the first attachment the objector shall have no further right to object to the attachment and sale of the same property in execution of the same decree, unless he can prove a title acquired subsequent to the date of the first attachment.

(2) *Postponement of sale.*—Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

(xlix) Order XXI, rule 66:

Proclamation of sales by public auction.—(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property, provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both the parties.

(3) Where the property to be sold is movable property which has been made over to a custodian under sub-clause (a) or (c) of clause (1) of Rule 43 of this Order, the Court shall also issue a process by way of notice to the custodian, directing him to produce the property at the place of sale at a time to be specified therein, with a warning that if he fails to comply with the directions, he shall be liable to action under section 145 of the Code of Civil Procedure.

(4) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner herein before prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(5) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

(i) Order XXI, rule 68:

Time of sale.—Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least **fifteen** days in the case of immovable property, and of, at least, **one week** in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

(ii) Order XXI, rule 69:

Adjournment or stoppage of sale.—(1) The Court may in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in this discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than **thirty** days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

(iii) Order XXI, rule 75:

Special provisions relating to growing crops.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored, but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or **can be sold to great advantage in an unripe state**, it may be sold before it is so cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

(iii) Order XXI, Rule 89:

(1) *Application to set aside sale on deposit.*—Where immovable property has been sold in execution of a decree, **any person claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person**, may apply to have the sale set aside on his depositing in Court—

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

(liv) Order XXI, rule 90:

Application to set aside sale on ground of irregularity or fraud.—Where

any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud:

Provided further that no such sale be set aside on any ground which the applicant could have put forward before the sale was conducted.

(iv) Order XXI, rule 98:

Resistance or obstruction by judgment-debtor.—Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, it shall direct that the applicant be into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days. Such detention shall be at the public expense and the person at whose instance the detention is ordered shall not be required to pay subsistence allowance.

(vi) Order XXI, rule 104:

For the purpose of all proceedings under this order, service on any party shall be deemed to be sufficient if effected at the address for service referred to in Order VIII, rule 11, subject to the provisions of Order VII, rule 24, provided that this rule shall not apply to the notice prescribed by rule 22 of this Order.

(lvii) Order XXIII, rule 3:

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part, by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purposes of deciding whether there has been any adjustment or satisfaction, unless the Court for reasons to be recorded in writing, thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided.

Provided further that when an application is made by all the parties to the suit, either in writing or in open Court through their counsel, that they wish to compromise the suit, the Court may fix a date on which the parties or their counsel should appear and the compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which the Court proposes to adjourn the hearing.

(lviii) Order XXX, rule 1:

Suing of partners in name of firms.—(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue

or be sued in the name of the firm (if any) of which such persons were partners at the time of the occurring of the cause of action, and any party to a suit may, in such case, apply to the Court for a statement of the names and addresses of the persons who were at the time of the occurring of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code, to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Explanation.—This rule applies to a joint Hindu family trading partnership.

(lix) Order XXXII, rule 1:

Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Such persons may be ordered to pay any costs in the suit as if he were the plaintiff.

(lx) Order XXXII, rule 3:

Guardian for the suit to be appointed by Court for minor defendants.—(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) The plaintiff shall file with his plaint a list of relatives of the minor and other persons, with their addresses, who *prima facie* are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2) above.

(4) The Court may, at any time after institution of the suit, call upon the plaintiff to furnish such a list, and, in default of compliance, may reject the plaint.

(5) A person appointed under sub-rule 1 to be guardian for the suit for a minor, shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

(6) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor, and that each person proposed is a fit person to be so appointed.

(7) No order shall be made on any application under this rule, except upon notice to any guardian in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule:

Provided that the Court may, if it sees fit, issue notice to the minor also.

(lxi) Order XXXII, rule 4:

Who may act as next friend or be appointed guardian for the suit.—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(2A) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may, subject to the proviso to sub-rule (1), appoint as his guardian for the suit a relative of the minor.

If no person be available who is a relative of the minor, the Court shall appoint one of the other defendants, if any, and, failing such other defendant, shall ordinarily proceed under sub-rule (4) of this rule to appoint one of its officers or a pleader.

(3) No person shall, without his consent, be appointed guardian for the suit, but the Court may presume such consent to have been given unless it is expressly refused.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader to be such guardian, and may direct that the costs to be incurred by such person in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

(lxii) Order XXXII, rule 1:

Application of order.—This order shall apply only to:—

- (a) the high Courts of Judicature at Fort William, Madras and Bombay;
- (b) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied;
- (c) the Courts of the District Judges and Subordinate Judges invested with Small Cause Court Powers in the State of Himachal Pradesh.

(lxiii) Order XXXVII, rule 3:

(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally, or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise, as the Court thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1).

(lxiv) Order XLI, rule 1:

(1) *Form of appeal what to accompany memorandum.*—Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded;

Provided that when two or more cases are tried together and decided by the same judgment, and two or more appeals are filed against the decrees, whether by the same or different appellants, the officer appointed in this behalf may, if satisfied that the questions for decision are analogous in each appeal, dispense with

the production of more than one copy of the judgment.

(2) *Contents of memorandum.*—The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any arguments or narrative; and such grounds shall be numbered consecutively.

(lxv) Order 41, rule 14:

(1) *Publication and service of notice of day for hearing appeal.*—Notice of the day fixed under rule 12, shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) *Appellate Court may itself cause notice to be served.*—Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader the provisions above referred to.

(3) It shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on the application of any party or on its own motion, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of, or at any proceeding subsequent to the decree of that Court, or on the legal representatives of any such respondent:

Provided that:

(a) the Court may require notice of the appeal to be published in any newspapers or in such other manner as it may direct;

(b) no such order shall preclude any such respondent or legal representative from appearing to contest the appeal.

“(4) Where the respondent or any of the respondents has migrated to Pakistan and he cannot be served in the ordinary way, if the appeal has arisen out of suit to obtain relief respecting, or compensation for wrong to, immoveable property, the notice shall be served on the Custodian of Evacuee Property, Himachal Pradesh. In all other cases, the notice shall be served on such Custodian and a copy of the notice shall be sent, by registered post, to the Secretary General to Pakistan Government.

(5) The provisions of sub-rule (4) shall *mutatis mutandis* apply to appellants who have migrated to Pakistan and who cannot be served in the ordinary way.”

(lxvi) Order XLI, rule 23-A:

Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal, and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

(lxvii) Order XLI, rule 35:

Date and contents of decree.—(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions, such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.—

Provided that, where there are more Judges than one, and there is a difference of opinion among them, it shall not be necessary, for any Judge dissenting from the judgment of the Court, to sign the decree:

Provided also in the case of the Judicial Commissioner's Court, that the Registrar, or such other officer as may be in charge of the Judicial Department from time to time, shall sign the decree on behalf of the Judge or Judges who passed it; but that such Registrar, or such officer, shall not sign such decree on behalf of a dissenting Judge:

(lxviii) Order XLI, rule 38:

(1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

(2) The notice of appeal, and other processes connected with proceedings therein, shall issue to the addresses mentioned in clause (1) above, and service effected at such addresses shall be as effective as if it had been made personally on the appellant or respondent, as the case may be.

(3) Rules 21, 22, 23, 24, and 25 of Order VII shall apply so far as may be, to appellate proceedings.

(lxix) Order XLII, rule 2:

In addition to the copies specified in Order XLI, rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance unless the Appellate Court dispenses therewith.

(lxx) Order XLIII, rule 1:

Appeals from Orders.—An appeal shall lie from the following orders under the provisions of section 104, namely:—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the

abatement or dismissal of a suit;

- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 2, rule 4 or rule 7 of Order XXXIV refusing to extend the time for the payment of mortgage money;
- (p) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than Judicial Commissioner's Court refusing the grant of a certificate under rule 6 of Order XLV;
- (w) an order under rule 4 of Order XLVII granting an application for review.

H. L. SONI,
Registrar,
Judicial Commissioner's Court.